IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA STATESVILLE DIVISION CASE NO. 5:22-CV-095-KDB-DCK

GLENN S. MILLSAPS, JR.,)
Plaintiff,)
V.)) <u>ORDER</u>
IREDELL COUNTY DISTRICT ATTORNEY'S OFFICE, et al.,)
Defendants.)
)

THIS MATTER IS BEFORE THE COURT on Plaintiff's "Motion To Compel Discovery" (Document No. 51) filed July 3, 2023; Plaintiff's "Motion For Leave To Amend All July 19, 2022 Summons To October 11, 2022" (Document No. 56) filed August 16, 2023; Plaintiff's "Memorandum In Support Of Motion To Take Judicial Notice Of Public Records" (Document No. 57) filed August 16, 2023; and Plaintiff's "Motion To Take Judicial Notice Of The July 24, 2019, (Verified) CCTV Video" (Document No. 64). These motions have been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b), and immediate review is appropriate. Having carefully considered the motions and the record, the undersigned will deny the motions, as further explained below.

Motion To Compel (Document No. 51)

By the instant motion to compel, Plaintiff is seeking to compel the Iredell County Sheriff's Office and the Statesville Police Department to provide various documents. <u>See</u> (Document No. 51, pp. 12-13). Nonetheless, as the response in opposition to the motion states, "no Initial Attorney's Conference has taken place...[and] no Scheduling Order has yet been entered in this case." (Document No. 52, p. 2). This is because a Case Management Order is only entered

following an Initial Attorney's Conference and the filing of a Certification of Initial Attorney's Conference, which occur after joinder of the issues. See LCvR 16.1(d). In this case, joinder of the issues has not yet occurred because the motions to dismiss (Document Nos. 21, 24, 27, 31) have not been resolved by the Court. The Local Rules make clear that "Court-enforceable discovery does not commence until issues have joined and a Scheduling Order has been entered," but "parties may engage in *consensual* discovery at any time." LCvR 16.1(f) (emphasis added). Thus, Plaintiff's motion is premature and should be denied without prejudice to Plaintiff bringing a renewed motion, if appropriate, after discovery has commenced.

Motion For Leave To Amend Summons (Document No. 56)

Plaintiff seeks leave to amend the date of some of his summons from July 19, 2022 to October 11, 2022, presumably to cure the timeliness issues raised by some of the motions to dismiss. Nonetheless, given that the undersigned respectfully recommends that the Amended Complaint *not* be dismissed for failure to timely serve some of the Defendants, the undersigned will respectfully order that this motion be denied as moot.

Motions To Take Judicial Notice (Document Nos. 57 and 64)

Plaintiff's "Memorandum In Support Of Motion To Take Judicial Notice Of Public Records" (Document No. 57) seeks, seemingly, to request that the Court take judicial notice of a variety of miscellaneous documents. Furthermore, Plaintiff's "Motion To Take Judicial Notice Of The July 24, 2019, (Verified) CCTV Video" (Document No. 64) requests that the Court take judicial notice of a video allegedly depicting the underlying events of Plaintiff's arrest. "Generally, when a defendant moves to dismiss a complaint under Rule 12(b)(6), courts are limited to considering the sufficiency of allegations set forth in the complaint and the 'documents attached or incorporated into the complaint." Zak v. Chelsea Therapeutics Intern., Ltd., 780 F. 3d 597,

606 (4th Cir. 2015). Here, the undersigned will respectfully decline to take judicial notice of Plaintiff's records, leaving consideration of such material to the Court's discretion at a later stage of the litigation. Thus, the undersigned will respectfully order that both of these motions to take judicial notice be denied without prejudice.

IT IS, THEREFORE, ORDERED that Plaintiff's "Motion To Compel Discovery" (Document No. 51) is **DENIED without prejudice**.

IT IS FURTHER ORDERED that Plaintiff's "Motion For Leave To Amend All July 19, 2022 Summons To October 11, 2022" (Document No. 56) is **DENIED as moot**.

IT IS FURTHER ORDERED that Plaintiff's "Memorandum In Support Of Motion To Take Judicial Notice Of Public Records" (Document No. 57) is **DENIED without prejudice**.

IT IS FURTHER ORDERED that Plaintiff's Motion To Take Judicial Notice Of The July 24, 2019, (Verified) CCTV Video" (Document No. 64) is **DENIED without prejudice**.

SO ORDERED.

Signed: January 8, 2024

David C. Keesler

United States Magistrate Judge